IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1436 OF 2003

Shri Ulhas @ Balasaheb Khadke ...Appellant

Versus

Vitthal Aba Khadke and others ...Respondents

Shri S.S.Salunkhe for the Appellant.
Shri R.D.Soni for the Respondent Nos.1 to 5.
Shri S.N.Gawade, A.G.P for the Respondent Nos.6 and 7.

CORAM : A. S. OKA, J.

DATE : JANUARY 29, 2007.

P.C.:

1. Heard Advocates appearing for the parties. In the year 1989 one of the trustees of Shri Siddheshwar Devasthan died. The first Respondent filed a change report in the year 2002 contending that as per the mode of appointment provided at that time, four (the second to fourth Respondents herein) trustees have been appointed by the villagers. The change report was accepted by the learned Assistant Charity Commissioner. In an Appeal preferred by the present Appellant, the order accepting the change report was set aside. The order in Appeal was interfered with by the District Court on an Application made by the first to fifth Respondents under section 72 of the Bombay Public

Trusts Act, 1950.

2. The submission of the learned Advocate for the Appellant is that one trustee expired in the year 1989 and therefore only his vacancy could have been filled in. He submitted that appointment of the four trustees, in any event, was not in accordance with the mode provided for the appointment of trustees.

3. The learned Advocate appearing for the first to fifth Respondents has placed on record a xerox copy of order dated 04th January, 2005 passed by the learned Assistant Charity Commissioner by which a scheme for the management and administration of the said Trust was framed under section 50(A)(1) of the said Act of 1950. He pointed out that under the said order of Assistant Charity Commissioner, first board of trustees consisting of 11 members has been appointed and the said board of trustees is functioning from January 2005. The learned Advocate for the Appellant pointed out that aforesaid order passed by the Assistant Charity Commissioner has been challenged by the Appellant by preferring an Appeal and said Appeal is pending.

4. Considering the aforesaid submissions, it is crystal clear that the present board of trustees of the Trust is constituted on the basis of order dated 04th January, 2005 and as of today none of the trustees are functioning on the basis of change report which is subject matter of this Appeal. Therefore, the change report subject matter of the present Appeal has become academic. As the Appellant has already preferred an Appeal against order dated 04th January, 2005, it is obvious that legality and validity of the appointment of the first board of trustees under the said order will be gone into in that Appeal.

5. Hence, Appeal is not entertained and the same is dismissed. All contentions of the parties in the pending Appeal, if any, are kept open.

JUDGE